

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEARNS, CONRAD AND SCHMIDT,  
CONSULTING ENGINEERS, INC. d/b/a SCS  
ENERGY, a Virginia Corporation,

Plaintiff,

v.

ENVIRONMENTAL SYSTEMS AND  
COMPOSITES, INC. d/b/a ESC  
CORPORATION, a Washington corporation,

Defendant.

No. C09-1616 RAJ

JOINT STATUS REPORT AND  
DISCOVERY PLAN

The parties jointly submit this Joint Status Report and Discovery Plan to the Court.

1. This is an action by Stearns, Conrad and Schmidt Consulting Engineers, Inc, d/b/a SCS Energy (“SCS”), an environmental engineering and construction firm, against its subcontractor Environmental Systems and Composites, Inc. d/b/a ESC Corporation (“ESC”), a firm allegedly specializing in providing engineering services and technologies for removal of contaminants from gas. SCS was allegedly retained by the University of New Hampshire to provide design/build services for a landfill gas processing facility. In order to perform these services, SCS entered into a purchase order with ESC related to the design of five hydrogen sulfide removal tanks. ESC arranged for the fabrication and shipment of the five tanks to the SCS job site. One of the tanks ESC provided failed. The reason for the failure is disputed by the parties. SCS contends that ESC’s design and fabrication of the five tanks did not comply with the terms of the purchase order and has asserted claims for breach of

1 contract, breach of warranty, and indemnification under the purchase order. SCS expects its damages  
 2 to exceed \$300,000. ESC contends that SCS damaged tanks in handling them and negligently installed  
 3 the tanks. ESC denies SCS's claims, points to previous statements made by SCS as to significantly  
 4 smaller claims inconsistent with its claims herein and contends that under the purchase order SCS owes  
 5 ESC the unpaid balance due under the purchase order in the amount of \$62,000 plus interest and fees.

6 2. Mediation would be the appropriate ADR method.

7 3. Mediation should take place by November 1, 2010.

8 4. Additional parties should be joined by June 1, 2010.

9 5. Proposed Discovery Plan

10 a. The parties conducted an FRCP 26(f) conference on January 6, 2010. Initial  
 11 disclosures were served by SCS on January 19, 2010 and by ESC on January 20, 2010.

12 b. Discovery is necessary regarding the negotiation and execution of the purchase  
 13 order, including the design, fabrication, handling, and repair of the hydrogen sulfide removal tanks.  
 14 Discovery is also necessary regarding the amount and basis for SCS and ESC's damages and mitigation  
 15 efforts made by either party, if any. It is not necessary to conduct discovery in phases.

16 c. No changes or limitations are necessary.

17 d. The parties will attempt to minimize expenses by exchanging documents  
 18 informally where possible.

19 e. No other orders are contemplated at this time.

20 6. Discovery can be complete by November 1, 2010.

21 7. The parties do not consent to appointment of a full time magistrate.

22 8. Bifurcation is not necessary.

23 9. At this time pre-trial statements and order should not be dispensed with in whole or in  
 24 part.

25 10. The parties do not have suggestions for shortening or simplifying the case.

26 11. The case can be ready for trial by February 15, 2011.

12. A jury trial has been demanded.

13. An estimated 5 to 7 trial days are required.

14. Trial Counsel are:

Counsel for Plaintiff:

Marisa M. Bavand  
Shelley Tolman  
Groff Murphy, PLLC  
300 East Pine Street  
Seattle, WA 98122  
Ph. 206/628-9500

Counsel for Defendants:

James J. Sullivan  
Attorney at Law  
11110 NE 38<sup>th</sup> Place  
Bellevue, WA 98004-7652  
Ph. 425/889-4521

15. No scheduling conference is requested.

16. All parties named to date have been served.

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1 Dated this 25<sup>th</sup> day of January, 2010.

2 Respectfully submitted,

3 GROFF MURPHY, PLLC

4 s/Marisa M. Bavand

5 Marisa M. Bavand, WSBA # 27929

6 Shelley Tolman, WSBA # 41019

7 300 East Pine Street

8 Seattle, WA 98122

9 Ph. 206/628-9500

10 Fx. 206/628-9506

11 E. [mbavand@groffmurphy.com](mailto:mbavand@groffmurphy.com)

12 E. [stolman@groffmurphy.com](mailto:stolman@groffmurphy.com)

13 *Attorneys for Plaintiff*

14 JAMES J. SULLIVAN

15 s/James J. Sullivan

16 James J. Sullivan, WSBA # 12423

17 Attorney at Law

18 11110 NE 38th Place

19 Bellevue, WA 98004-7652

20 Ph. 425/889-4521

21 E. [jj@sullivanlaw.com](mailto:jj@sullivanlaw.com)

22 *Attorney for Defendant*

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served on January 25, 2010, true and correct copies of the foregoing document to the counsel of record listed below, via the method indicated:

James J. Sullivan  
Attorney at Law  
11110 NE 38<sup>th</sup> Place  
Bellevue, WA 98004-7652  
Ph. 425/889-4521

***Counsel for Defendant***

[jjis@sullivanlaw.com](mailto:jjis@sullivanlaw.com)

[sullivanlaw@hotmail.com](mailto:sullivanlaw@hotmail.com)

Hand Delivery Via  
Messenger Service  
First Class Mail  
Federal Express  
Facsimile

☒ E-mail through ECF Court System

DATED this 25<sup>th</sup> day of January, 2010.

s/Beth A. Russo

Beth A. Russo, Legal Secretary

Groff Murphy, PLLC

300 East Pine Street

Seattle, WA 98122

Ph. 206/628-9500

E. [brusso@groffmurphy.com](mailto:brusso@groffmurphy.com)